DOCUMENT RESUME

ED 151 977 EA 010 480

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TITLE California Policies for Teacher Employment Relations, 1930 to 1975: The Gradual Development of a Bargaining Model.
PUB DATE Mar 78
NOTE 20p.; Paper presented at the Annual Meeting of the American Educational Research Asscciation (Toronto, Ontario, March 27-31, 1978)

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS Citizen Participation; *Collective Bargaining; Court Litigation; Elementary Secondary Education; *Employment Practices; Government Employees; Higher Education; History; *Labor Legislation; *Public Policy; State Legislation; Teacher Associations; *Teacher Employment; Teacher Strikes
IDENTIFIERS *California

ABSTRACT

The major results are described of an historical/legal study of statewide legislative and judicial decisions tracing changes in California's state policies regarding teacher labor relations from 1930 to 1975. The central research questions dealt with identifying specific public policy changes, events surrounding these changes, positions taken by key statewide organizations concerned with these changes, and the roles assigned by public policy formulations to the lay community for influencing teacher labor relations. Six periods of development of California policies are noted. In addition, generalizations are derived regarding two opposing views that surfaced during these years, the growth of public involvement in teacher employment relations processes, California's readiness to experiment with different employment relations models, the state's ambiguous attitude toward the strike, and the persistence of a gap between statewide policies and local practices. Certain implications are drawn for the general area of the study of teacher employment relations. (Author/MLF)

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CALIFORNIA POLICIES FOR TEACHER EMPLOYMENT RELATIONS, 1930 TO 1975: THE GRADUAL DEVELOPMENT OF A BARGAINING MODEL

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Paper Presented at the Annual Meeting of
the American Educational Research Association,
Toronto, Ontario, March 27 - March 31, 1978

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THE GRADUAL DEVELOPMENT OF A BARGAINING MODEL

Introduction

In 1933, California enacted the following statute:

> The public policy of this state is declared as follows:
>
> > Negotiations of terms and conditions of labor should result from voluntary agreement between employer and employee.... Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment...[1]

In spite of the fact that teachers were not specifically excluded from this policy statement, it was not until 1975 that similar rights were extended to educational employees. What occurred in the intervening years was a series of public policy pronouncements (some of which were conflicting) that reflect a state's attempts to regulate teacher employment relations.

The aim of this paper is to describe the major results of a study[2] that investigated the development of such California policies. This description occurs in three stages. First, attention is given to the purpose and methods of the study. Then, its major findings are reported. And finally certain implications are drawn for the general area of the study of teacher employment relations.

Purpose and Methods of the Study

The purpose of the study was to trace the development of California labor policies toward teachers. The focus was on public school teachers

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1 Cal. Stats. 1933, ch. 566, pp. 1478-9

2 For the entire study, see: Richard M. Englert, California Policies for Teacher Employment Relations, 1930 to 1975. Doctoral Dissertation, University of California at Los Angeles, 1976.

(K-12). But since historically California teachers were at times included in categories with other public employees, it was necessary to examine a wider context made up of community (junior) college teachers, classified personnel at all levels, university faculties, and other public employees (such as police, fire, transit, social workers).

Court pronouncements and laws were viewed as the key media for identifying state-wide policies for teacher labor relations. Other matters, such as organizational activities of teacher and administrator groups, bills introduced into the legislature, executive rulings and opinions, and significant activities at local school district levels, were of importance insofar as they shed light upon the more central concern of public policies enunciated through formal legislative and judicial decisions.

Four central research questions were addressed:

1. What changes have occurred in legislative and judicial rulings about teacher labor relations?

2. What kinds of events seemed to surround and lead up to certain key public policy formulations?

3. What kinds of positions and activities of statewide organizations of teachers, administrators, and school board members seemed to affect such formulations?

4. In the public policy formulations themselves, what role, if any, was given to the lay community in influencing teacher labor relations? How has that role changed?

Sources used for data collection were predominantly legal, though supplemented by other documents and oral testimony. Primary legal sources included codes, digests, statutes for each year, official reports of California courts, daily logs of legislative sessions, and records of hearings and reports of legislative committees. Other

sources were: publications, records, and reports of state-wide educational organizations (notably, the California Teachers Association, the California Federation of Teachers, the California School Boards Association, and the Association of California School Administrators), newspaper accounts, available personal letters and records of key individuals, and oral testimony.

Data were collected within the framework of the research questions mentioned above. Such data were subjected to external and internal criticism. Activities, events, etc. were classified according to periods, interrelated with previous and subsequent events, and fitted into an historical framework. A final synthesis was developed based upon the original intent of the study and upon key generalizations that seemed to emerge.

Major Findings

Six Periods of Development

A first significant finding of the study was that a number of changes occurred in California policies between 1930 and 1975. These could be depicted in terms of six periods of development. During each period, policies took on certain characteristic patterns.

In the first period (the 1930's), teacher employment matters were determined by state legislation one-by-one. For example, specific statutes controlled certification, retirement, dismissal, leaves, and probationary employment. A teacher was clearly considered an employee, and a "contract" was seen as an agreement offered yearly to an individual teacher by the board as employer.[3] Thus, teachers bargained individually, not through labor organizations. Also, legislated tenure

[3] Abraham v. Sims, 2 C. 2d 698 (1935).

provided a degree of security for teachers that other public employees and private industry workers did not have. However, on the whole, no clear differentiations emerged between public employees in general and private sector workers.

At the beginning of the 1940's there was some confusion about whether public employees (including teachers) were actually covered by California statutes expressing state public policy toward employment relations. Whereas current sentiment at that time was in favor of limiting the 1933 policy statement to private sector employees alone, no unambiguous legislative or judicial rulings were enunciated to support this interpretation. The second period (1940's and 1950's) was characterized by attempts to define public employment vis-a-vis private employment and by a continuation of the pre-1940 practice of determining teacher employment matters one-by-one by legislative action.

Clarification of the status of public employment in this period came through judicial, not legislative, action. Three key court decisions[4] established several basic tenets of California public policy: (1) public employment was governed by legislation, not contract; (2) public employees could not strike against the government; (3) public employees could through local regulations of their employers be denied union membership; (4) the 1933 provisions about voluntary collective bargaining agreements did not apply to public employment; and (5) general statutes, such as those about employer-employee relations, did not pertain to the government as employer if its sovereignty would thereby be limited.

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[4] The three key court decisions at this time were: Nutter v. City of Santa Monica, 74 C.A. 2d 292 (1946). Perez v. Board of Police Commrs., 78 C. A 2d 638 (1947). City of Los Angeles v. Los Angeles etc. Council, 94 C. A. 2d 36 (1949).

Other judicial decisions ruled that a public employee could legally be prevented by his local employer from becoming a union president[5] and that a collective bargaining agreement that was entered into by public employees was void.[6] Court cases such as these left no doubt that public employees (including teachers) were a separate entity from private industry workers and were not necessarily entitled to the same rights and privileges as the latter.

In this period, especially in the 1950's, it also became apparent that a number of factors reinforced the status quo for teacher employment relations. Organizational rivalries between teacher associations and teacher unions, administrator dominance of the national and state teacher associations, the attitude that teachers and administrators were fellow members of a united profession, a teacher aversion to blue-collar unionism, teacher security through current tenure laws, and the dominant teacher association's success in, and preference for, state-level lobbying were all evident. Factors such as these supported existing state policies about public employment in general.

From the late 1950's to 1964 a third period emerged. In this period many public employees were granted specific employment rights by statewide legislation. Once again, teachers as such were not in the limelight as far as statewide labor relations policies were concerned.

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5 Young v. Board of Building and Safety Commissioners of the City of Los Angeles, 100 C. A. 2d 468 (1950).

6 State of California v. Brotherhood of R R. Trainmen, 37 C. 2d 412 (1951).

Rather, the battles fought involved transit workers,[7] firefighters,[8] and public employees in general.[9] Public policies toward teacher labor relations were affected in two ways: (1) some of the policies developed covered teachers because the policies pertained to all public employees; and (2) even those policies that did not govern teachers still broke ground or provided models or principles for later legislation and court decisions dealing specifically with teachers. The 1961 Brown Act gave all public employees (including teachers) the rights of organizing without interference and of meeting and conferring with policy makers. This law represented a great advance over some quite restrictive court rulings of the 1940's.

At the same time, court rulings reiterated the principle that public employees did not have the right to strike against the government.[10] And some precedent was established for dismissal of an employee even advocating a strike.[11]

Overall, during the 1957-1964 period a number of obstacles were removed and precedents established to prepare the way for laws to be passed regarding teacher labor relations. Precedent was set for passing laws for certain groups of public employees. Federal legislation was used as a model for specific language in California public employee statutes.[12] California courts set the precedent of looking at federal legislation and court rulings

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7 Los Angeles Metropolitan Transit Authority Act (Cal. Stats. 1957, ch. 547, p. 1609).

8 Firefighters Provisions (Cal.Stats. 1959, ch. 723, p. 2711).

9 George Brown Act (Cal.Stats. 1961, ch. 1964, pp 4141-4143),

10 Newmarker v. Regents of the University of California, 160 C.A. 2d 640 (1958)

11 Pranger v. Beak, 186 C.A. 2d 551 (1960).

12 This was especially true in the case of the Los Angeles Metropolitan Transit Authority Act.

to shed light upon the interpretation of California statutes.[13] In short, the concept of employee negotiations was becoming more familiar. In fact, in an aside comment the Supreme Court of California even stated that it saw no constitutional obstacles to the passage of a law giving teachers and certain other public employees the right to strike.[14] Moreover, the Brown Act of 1961 established a basic model to be used for later legislation: meet-and-confer provisions, the right to organize, a wide scope of representation.

The thrusts of the third period were continued and broadened in the fourth period (1965 to 1970). California embarked upon a novel experiment which sought to grant teachers participation in the determination of employment conditions and educational policies. The Winton Act[15] of 1965 was for teachers a deliberate alternative to collective bargaining. Its main provisions were concerned with proportional negotiating councils (not "exclusive bargaining representatives"), the right to meet and confer (not "bargaining in good faith"), and a very broad scope of discussion that included both working conditions and educational policy matters. Thus, this law gave school personnel a voice while still preserving the unilateral decision-making powers of the governing boards.

In the courts, the interpretations of the Winton Act during this period were extremely cautious ones. Two court rulings[16] supported the con-

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13 Los Angeles Metropolitan Transit Authority v. Brotherhood of R.R. Trainmen, 54 C. 2d 684 (1960).

14 54 C. 2d 684 at 693

15 Cal. Stats. 1965, ch. 2041, p. 4660.

16 See: Berkeley Teachers Association v. Berkeley Federation of Teachers (254 C.A. 2d 660, 1967) and California Federation of Teachers, AFL-CIO v. Oxnard Elementary Schools (272 C.A. 2d 514, 1969).

stitutionality of the law and refused to give teachers any rights not specifically stated in the act. Such decisions made it clear that California's policy was that public employees did not have any private sector bargaining rights unless specifically authorized by the legislature.

At the same time, the late Sixties in California were characterized by a growing disenchantment with the Winton Act among teachers. The state's largest teacher organization, which had supported the Winton Act, quickly became split over the law. Several powerful factions arose and began to move the organization towards support for a state policy more in line with the private sector bargaining model. Unionism was on the rise, both in California and in the nation, and pressures rose to change non-collective bargaining policies.

Stage five (1971-1974) was characterized by three parallel developments. Courts continued to refine their definition of the Winton Act in a very narrow fashion. In local districts, many teacher groups blatantly ignored the Winton Act and acted as if collective bargaining (especially striking) were legalized. And the state legislature moved gradually closer and closer to adopting a collective bargaining law for teachers. By 1974, a consensus began to be reached upon a bargaining law. Conservative interpretations (by courts) of the Winton Act and attempts to ignore it in practice only added to the growing awareness that the Winton Act was no longer appropriate to resolve the labor problems of teachers.

The sixth period of California policy development with regard to teacher labor relations began in 1975 with the passage of the Rodda Act.[17] After several attempts to pass a comprehensive collective bargaining bill for all

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17 California Government Code, Sections 3540 to 3549.3.

public employees, a law was enacted that authorized a collective bargaining model for teachers only. In spite of the fact that the words "collective bargaining" and "contract" appear nowhere in it, there is little doubt that the Rodda Act instituted a bargaining structure. Provisions for meeting and negotiating in good faith, agreements that are binding, election of exclusive negotiating representatives, impasse and grievance procedures, regulation by a state agency, and organizational security greatly resemble similar provisions in private sector legislation. After over forty years, teachers have been granted rights similar to those of workers in private employment.

A Parallel Dissenting View

It should be pointed out, however, that these six periods of development in California were not characterized by total legislative and judicial agreement about what constituted state public policy toward teacher employment relations. Quite the contrary, from 1930 to 1975 there existed a string of judgments and opinions that dissented from the predominant point of view. Although up until 1975 California policies were principally described as opposing collective bargaining for public employees (including teachers), a minority view did exist.

This dissenting view was articulated quite clearly as early as the 1940's, when a Superior Court judge ruled that the 1933 policy statement in favor of collective bargaining did apply to municipal corporations and enjoined a city from not bargaining with the representatives of a labor organization. The judge wrote:

> it is well to state boldly that there is no law of this State which forbids or renders unlawful the organization of public employees for their mutual welfare and benefit....In its enactment of this section [i.e. 1933 policy] the legis-

> lature was declaring a state-wide public policy, and with no intent to distinguish between public and private employees, and with no expression, direct or implied,of limitation of its provisions to employees in private industry only.[18]

In 1946, this lower court decision was overturned at the appellate court level. Nevertheless, a minority view had been presented.

In 1944, the Attorney General of California offered an opinion congruent with the lower court's ruling above.[19] Asked whether the California State Public Housing Authority (a public body) could legally enter into a collective bargaining contract, the Attorney General answered in the affirmative. He argued that since public bodies could legally enter into contracts with individual employees, since no state statutes prohibited bargaining with groups, and since national public policies encouraged collective bargaining, there seemed to be no reason why the Housing Authority could not engage in collective bargaining.

This minority view -- that public employees could bargain collectively -- continued to surface at one time or another for the next thirty years. In a 1951 California Supreme Court case,[20] a justice in a dissenting opinion wrote a quite articulate argument in favor of the position that certain public employees (i.e., employees of a state-operated railroad) had the right to bargain collectively. In 1960, the California Supreme Court liberally interpreted language in a 1957 transit act to authorize the right to strike for public transit workers[21]

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18 As quoted in 4 Ops. Atty. Gen. 139 at 143-4.

19 4 Ops. Atty. Gen. 139

20 State of California v. Brotherhood of R.R. Trainmen, 37 C. 2d 412 (1951).

21 Los Angeles Met. Transit Authority v. Brotherhood of R.R. Trainmen, 54 C. 2d 684 (1960).

A 1967 Superior Court judge observing that the 1961 Brown Act did not contain any no-strike clause, wrote:

> It appears to this court...that it cannot be stated, without considerable doubt, that (the law)...does not authorize public employees...to go on strike.[22]

Similarly, another lower court judge, reviewing previous court rulings touching upon the strike issue, decided that no California court had yet dealt precisely with the matter of strikes by public employees. He argued that any earlier court statements only had the weight of dicta (i.e. mere peripheral opinions of the judge) and not of judgments (i.e., definite rulings on specific matters at hand). He concluded that teachers had not been denied the right to strike.[23] Although these two latter decisions were overturned at the appellate level, still they expressed the dissenting view that has existed parallel to the dominant view about public employees and their rights to bargain collectively and strike.

In the 1970's this parallel view continued to be enunciated at one time or another. A 1970 court case ruled that employees returning from a strike could not be discriminated against.[24] Two 1974 judgments at the Supreme Court level drew upon federal laws for private sector employees to define the scope of public employee rights under California law.[25] And in 1975 the Supreme Court allowed a San Francisco resolution to stand in spite of the fact that it was the result of a strike

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22 Social Workers Union, Local 535 v. County of L.A., Memorandum Opinion, no. 887-678, January 24, 1967.

23 City of San Diego v. A.F.S.C.M.E. Local 127, no. 312056, June 9, 1969; 2 CPER 51).

24 East Bay Municipal Emp. Union v. County of Alemeda (3 C.A. 3d 578, (1970).

25 Social Workers Union Local 535 v. Alemeda Co. Welfare Dept. (11 C. 3d 382, 1974); Fire Fighterr Union Local 1186 v. City of Vallejo (12 C. 3d 608, 1974).

and embodied the substance of bilateral agreements between public employer and employee.[26]

These and other decisions lend credence to the argument that California public policies that stated that public employees before 1975 were not allowed to engage in collective bargaining were actually not entirely clear-cut. In fact, it is possible to say that the history of state policies regarding public employees (including teachers) was made up of two competing philosophies or opinions. Thus, the Rodda Act for teachers could be said to indicate the demise of a once dominant opinion and its replacement by a dissenting view that favors collective bargaining rights for public employees.

Public Involvement in Teacher Labor Relations

A third significant finding of this study was that gradually a public role in teacher employment relations has evolved. In the Forties and Fifties the public's stake in teacher labor relations was expressed through, and even identified with, the decisions of public officials. At the state level these were the Legislators. At local levels the school board and its administrators were viewed as the public's spokespersons. This view was specifically stated by court decisions and implied by legislation.[27]

In the Sixties and early Seventies, a different concept evolved. Emphasis was placed upon opening some aspects of the employment relations process (especially negotiations) to public view and allowing time for

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26 City and Co. of San Francisco v. Cooper (1975), reported in The Los Angeles Daily Journal Appellate Reports, May 2, 1975, pp. 3-15.

27 For example, officers of government employment were closely identified with "The people" in Perez v. Bd. of Police Comm, 78 C.A. 2nd 638 (1947).

the community to express its views. Bills and legislation finally stressed the public's role as an active participant. Negotiation demands were required to be made public, and community members were allowed time and meetings to express their views. Fact-finding recommendations were to be made public. In the courts, "taxpayer" groups challenged contracts. It could be said that over the years community members and groups were allowed a progressively larger role in teacher labor relations activities. For example, the Rodda Act of 1975 provided for public review or involvement regarding bargaining procedures in eight separate ways: (1) employees organizations were required to file annual financial reports; (2) the state regulatory agency was required to make an annual report to the legislature; (3) one of the criteria a factfinder had to use was a consderation of the interests and welfare of the public; (4) a factfinder's recommendations, if not accepted by the parties, was to become public record; (5) all initial proposals of the employer and employees were to be made at public meetings; (6) meeting and negotiating on those proposals could not occur until the public had had a reasonable length of time to consider and discuss those proposals; (7) new bargaining subjects must be made public within 24 hours after their presentation; and (8) the state regulatory agency was given the power to adopt regulations that would insure the public's rights to be informed and to express its views on the negotiating issues.[28]

In brief, over the years "public involvement" has changed from a position of total representation through state and local officials

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28 See the following sections of the California Government Code: 3546.5; 3541.3f; 3548.2; 3547a; 3547b; 3547d; 3547e.

to one of participation through public disclosure of certain aspects of bargaining processes. However, at no time were community members allowed to participate in actual negotiating sessions. In fact, inclusion of an amendment providing for opening up bargaining to public participation was said by some observers to be a key obstacle to the passage of a comprehensive bargaining law for all public employee in 1975.[29]

Other Significant Findings

A fourth finding was that the California legislature exhibited a highly experimental attitude in its development of labor relations policies for public employees, including teachers. Experimentation began in the Fifties, when transit workers were given the right to bargain collectively. In 1959, firefighters were selected and granted the right to organize. After these preliminary, piece-meal laws, the 1961 Brown Act conferred the rights of organizing and meeting and conferring on all public employees. Teachers were the group that received the next set of organizational rights through the 1965 Winton Act: a wide scope of meeting and conferring and representation through proportional negotiating councils. Experimentation continued in 1968 when local public employees were granted the power to meet and confer "in good faith" and provision was made for the signing of written memoranda of understanding if agreement were reached. This was the Meyers-Milias-Brown Act.[30]

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29 See L. Cartabruno, "Anatomy of a Failure: How the Plug was Pulled on Comprehensive Bargaining Legislation" (Unpublished manuscript, 1975).

30 Cal.Stats. 1968, ch. 1930, p. 2727.

Thus, by 1968 different groups of public employees were covered by various statutes. Transit workers actually had collective bargaining, whereas teachers were governed by a model considered to be an alternative to bargaining. Local public employees had rights somewhere in between bargaining and the Winton Act alternative, but state public employees were still under the relatively - rudimentary provisions of the Brown Act. And all firefighters had certain statutory provisions of their own, while local firefighters were also simultaneously regulated by the Meyers-Milias-Brown Act and state firefighters by the Brown Act. In short, in spite of numerous attempts to introduce and pass bills providing for one single comprehensive law for all public employees, the legislature in practice had greatly fragmentized public employees through a unique system of experimental statutes. Such a posture indicated a willingness on the part of the legislature to try different, sometimes novel, approaches to public employee labor relations. The kinds of laws enacted reflected a legislative concern that public employees should not just automatically be given bargaining rights, but rather those rights should be extended only gradually after other alternative approaches had been found to be inadequate. In a very real sense, then, the Rodda Act can be conceptualized as an experimental run preceding the granting of bargaining rights to all California public employees. Whether the latter actually occurs, however, depends on the perceived success of the Rodda Act.

A fifth significant finding deals with California's curious policy toward the strike by public employees. At first glance, one might think that the strike issue was clearly settled by the 1949 City of Los Angeles v. Los Angeles etc. Council case, in which the appellate court

judge ruled that organized labor may not legitimately strike and picket against the government.[31] And a 1973 appellate court judgment supported a lower court's decision that an agreement based upon an illegal strike was void.[32] These are but two examples of numerous California court rulings that the strike is illegal for public employees, unless the right to strike is specifically legislated.

Nevertheless, California's policy in this regard was surprisingly ambiguous. First, the legislature has consistently refused to enact anti-strike legislation in spite of numerous bills introduced against the strike for public employees.[33] Second, neither have the courts been entirely unanimous about strikes. In 1967 and in 1969 two different Superior Court judges concluded that the issue of public employees' right to strike has not been settled.[34] Moreover, in 1975, the California Supreme Court allowed an agreement signed by San Francisco to stand as valid, in spite of the fact that the agreement was enacted under the coercion of a strike.[35] In this decision the Court specifically stated that it recognized that a series of Appelate Court decisions had declared the strike illegal for California public employees, but, the Court added, "we have no occasion to resolve this controversy in the present action...." This latter statement certainly implied the matter was by no means settled. In fact, the Court went to

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31 94 C.A. 2nd 36 (1949)

32 Grasko v. Los Angeles City Board of Education, 31 C.A. 3d 290 (1973).

33 The exception to this generalization is the case of firefighters, who have since 1959 been governed by provisions that specifically deny the right to strike.

34 See footnotes 22 and 23.

35 See footnote 26.

some length to stress that it was not ruling on the legality of strikes for public employees, as if the case was not closed on this issue. And since the Rodda Act is silent on the strike issue, one cannot say conclusively on the basis of the evidence between 1930 and 1975 that California's policy is one that is against public employee strikes.

One final finding that needs to be pointed out is the gap that developed between stated policy and local practices in the early 1970s. Whereas the policy of California at that time towards teacher labor relations was embodied in the Winton Act and its strict interpretation by courts, the practice in local school districts was very often one more closely approaching the collective bargaining model than the Winton Act model. Very simply, in many districts teacher organizations were acting as if collective bargaining were actually in effect: striking, negotiating, and making demands for equality of bargaining status with employers. Although it is difficult to say that such widespread civil disobedience "caused" the legislature's willingness to enact collective bargaining legislation, it would be reasonable to assume some relation existed between the two occurrences. If this were true, then California's experience with teacher employment legislation in the 1970s would be a prime example of policy formulation following practice.

Implications

On the basis of the above results, a number of implications can be drawn. For the sake of brevity, only two will be mentioned here.

First, as was pointed out, California policies concerning teacher labor relations have historically been closely intertwined with the policies that govern the employment relations of all public employees.

Up until 1965, teachers were considered in the category of "public employees" for most employment relations purposes. And even after 1965, both the Winton Act and the Rodda Act have been viewed by many as "bellweathers" for possible models to be applied to all public employees. It seems resonable to conclude therefore that, at least in California, state policies concerning teacher labor relations need to be understood in the context of policies governing all public employees. Hence, a likely implication is that studies of policy issues affecting teacher employment cannot ignore this wider context because many of the dimensions of such issues are unintelligble outside of it.

A second implication has to do with ways of interpreting state policy. On the basis of this study, it would seem that any view that state policy is purely reducable to dominant judicial and legislative opinions is necessarily incomplete. Policies, especially in the area of teacher employment relations, need to be interpreted also in terms of dissenting judicial views, bills that have been introduced yet failed, and widespread practices at local levels. These expressions of dissent might well be far more accurate indicators of future, and maybe even present, policies than are more traditional policy formulations.

In conclusion, this paper has attempted to present several findings of an historical legal investigation of California policies toward teacher employment relations from 1930 to 1975. The collection of similar data in other states might help to test some of the tentative conclusions drawn here. Such a wider data base regarding how state policies have developed might well indicate in which directions they will continue to develop, thus forecasting future structures for governing teacher labor relations.